

20428. All such copies shall be included in one package and shall be accompanied by a letter of tariff transmittal (§ 221.163).

§ 221.163 Letter of tariff transmittal.

All tariff publications (including indexes of tariffs and adoption notices) filed with the Board shall be accompanied by a letter of tariff transmittal in duplicate in the form prescribed in § 221.240. Each letter of transmittal may include one or more tariff publications but passenger tariff publications shall not be included in the same letter of tariff transmittal with property tariff publications. If the filing carrier or agent desires a receipt for the filing, the letter of tariff transmittal shall be sent in triplicate (accompanied by a preaddressed postage paid return envelope, if return by mail is requested), and one copy thereof showing the date of receipt by the Board will be returned to the sender.

(Approved by the Office of Management and Budget under control number 3024-0038)

[ER-874, 39 FR 34514, Sept. 26, 1974, as amended by ER-1271, 46 FR 63218, Dec. 31, 1981]

§ 221.164 Concurrences or powers of attorney not previously filed to accompany tariff transmittal.

When a tariff publication is filed on behalf of a carrier participating therein under authority of its concurrence or power of attorney, such concurrence or power of attorney shall, if not previously filed with the Board, be transmitted with such tariff publication submitted for filing and shall be listed in the letter of tariff transmittal.

(Approved by the Office of Management and Budget under control number 3024-0038)

[ER-439, 30 FR 9439, July 29, 1965, as amended by ER-1271, 46 FR 63218, Dec. 31, 1981]

§ 221.165 Explanation and data supporting tariff changes and new matter in tariff publications.

When a tariff publication is filed with the Board which contains new or changed local or joint rates, fares, or charges for air transportation, or new or changed classifications, rules, regulations, or practices affecting such rates, fares, or charges, or the value of the service thereunder, the issuing air carrier, foreign air carrier, or agent

shall submit with the filing of such publication, in or attached to the transmittal letter:

(a) An explanation of the new or changed matter and the reasons for the filing, including (if applicable) the basis of rate making employed. Where a tariff publication is filed pursuant to an intercarrier agreement approved by the Board, the explanation shall identify such agreement by CAB agreement number, IATA, or ATC resolution number, or if none is designated, then by other definite identification. Where a tariff publication is filed on behalf of a foreign air carrier pursuant to a Government order, a copy of such order shall be submitted with the letter of tariff transmittal.

(b) Economic data and/or information in support of the new or changed matter, including, in cases where pertinent,

(1) Estimates of costs of service, with supporting details and references to sources, and

(2) Estimates of the aggregate effect of the new or changed matter upon such carrier's traffic, schedules, and revenues, and an explanation of the basis for the estimates (including, where available, data as to past traffic, schedules and revenues).

(c) In cases where such publication contains new or changed local or joint rates (other than charter rates), fares, or charges (whether such rates, fares, or charges are published specifically or by rule), a table prepared as follows:

(1) In the first column, a sample of the pairs of points between which such new or changed rates, fares, or charges apply, which sample shall contain every 10th pair of all such pairs (but not less than 10 pairs, unless such new or changed rates, fares, or charges apply between fewer than 10 pairs of points, in which event all such pairs shall be included), but need not include more than 75 pairs of points, for each new or changed type of rate, fare (e.g., first class, coach, etc.), or charge included in such publication;⁵

⁵ If a carrier's freight rates are published in rate scales rather than on a point-to-point basis, the table shall contain a representative sample of the proposed rates and charges for each rate scale, which sample

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(2) In the second column, the existing rates, fares, or charges canceled or superseded by the new or changed rates, fares, or charges, except in cases where the publication contains new rates, fares, or charges which do not cancel or supersede existing rates, fares, or charges, in which event the second column shall contain those rates, fares, or charges upon which the filing air carrier relies for comparison⁶ in evaluating such new rates, fares, or charges;

(3) In the third column, the new or changed rates, fares, or charges;

(4) In the fourth column, the differences between the rates, fares, or charges listed in the second and third columns, expressed as percentages of those listed in the second column;

(5) In the fifth column, the existing fares per mile or rates or charges per ton-mile;

(6) In the sixth column, the new or changed fares per mile, or rates or charges per ton-mile; and

(7) In the seventh column, the airport-to-airport mileage⁷ used in computing the fares per mile or rates or charges per ton-mile.

shall contain 10 percent of all rates or charges, but not less than 10 rates or charges unless such new or changed rates or charges are less than 10, in which event all such rates or charges shall be included: *Provided, however,* That the sample need not include more than a total of 75 representative rates and charges for each new or changed type of rate or charge (e.g., general commodity or specific commodity) included in such publication.

⁶ Identify as, e.g., jet coach fare, general commodity rate, etc. If reliance is placed upon rates, fares, or charges for different pairs of points than shown in the first column, such points should be indicated by footnote.

⁷ The direct airport-to-airport mileage between the points shown in the first column shall normally be used for purposes of this table. Where points with multiple airports are involved, show the mileage to/from the principal airport with respect to the related service. Other than direct mileages may be used where appropriate (e.g., where the filing carrier is not authorized to provide direct service, or where a joint fare involves a circuitous routing via a junction point). In all instances where a mileage other than the direct airport-to-airport mileage is used, show the points by which it is computed and the reason for its use.

(d) Exceptions: (1) The requirement for data and/or information in paragraphs (b) and (c) of this section will not apply to tariff publications containing new or changed matter which are filed.

(i) In response to Board orders or specific policy pronouncements of the Board directly related to such new or changed matter.

(ii) Pursuant to an intercarrier agreement approved by the Board prescribing the rates, fares, charges (or specific formulas therefor) or other matter,

(iii) For the interstate air transportation of property, as defined in § 1002(k)(1) of the Act, or by air freight forwarders or international air freight forwarders, as defined in part 296 of this subchapter, or

(iv) To meet competition: *Provided, That*

(a) Changed matter will be deemed to have been filed to meet competition only when it affects decreases in rates, fares, or charges and/or increases the value of service so that the level of the rates or fares or charges and the services provided will be substantially similar to the level of rates or fares or charges and the services of a competing carrier or carriers.

(b) New matter will be deemed to have been filed to meet competition only when it establishes or affects a rate, fare, or charge and a service which will be substantially similar to the rates, fares, or charges and the services of a competing carrier or carriers.

(c) When new or changed matter is filed to meet competition over a portion of the filing air carrier's system and is simultaneously made applicable to the balance of the system, such matter, insofar as it applies over the balance of the system, will be deemed to be within the exception in this paragraph (d)(1)(iv) of this section only if such carrier submits an explanation as to the necessity of maintaining uniformity over its entire system with respect to such new or changed matter.

(d) In any case where new or changed matter is filed to meet competition, the filing carrier or agent must supply, in or attached to the transmittal letter, the complete tariff references

which will serve to identify the competing tariff matter which the tariff publication purports to meet. In such case the transmittal letter or attachment shall state whether the new or changed matter is identical to the competing tariff matter which it purports to meet or whether it approximates the competing tariff matter. If the new or changed matter is not identical, the transmittal letter or attachment shall contain a statement explaining, in reasonable detail, the basis for concluding that the tariff publication being filed is substantially similar to the competing tariff matter.

(2) The requirement for data and/or information in paragraph (b) of this section will not apply to foreign air carriers.

(3) The requirement for information in paragraph (c) of this section will not apply to tariff publications containing new or changed rates, fares or charges which result from (i) uniform percentage adjustments, (ii) specific increment adjustments, or (iii) cancellation of rates, fares or charges.

(4) The requirement for data and/or information in paragraph (b) of this section shall not apply to:

(i) Fares for scheduled passenger service that are within a statutory or Board-established zone of fare flexibility; and

(ii) Rates for cargo service in foreign air transportation that are within the rate flexibility zones set forth in § 399.41 of this chapter, except as specifically required by the Board.

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(Sec. 102, 72 Stat. 740 (49 U.S.C. 1302); National Environmental Policy Act of 1969 (Pub. L. 91-90, 42 U.S.C. 4321 *et seq.*) and E. O. 11514)

[ER-493, 32 FR 7453, May 19, 1967, as amended by ER-760, 37 FR 19804, Sept. 22, 1972; ER-796, 38 FR 10256, Apr. 26, 1973; ER-927, 40 FR 37183, Aug. 25, 1975; ER-1061, 43 FR 34118, Aug. 3, 1978; ER-1271, 46 FR 63218, Dec. 31, 1981; ER-1322, 48 FR 4270, Jan. 31, 1983]

§ 221.166 Explanation of missing C.A.B. numbers to accompany tariff transmittal.

Section 221.31(a) requires a carrier or agent to file tariffs under consecutive C.A.B. numbers. However, the Board may accept a tariff bearing a C.A.B.

number which is not consecutive and results in an unused C.A.B. number intervening since the last previously filed tariff: *Provided*, That a letter accompanies the tariff transmittal explaining why the C.A.B. number of the tariff is not consecutive to the last previously filed tariff and stating whether or not the missing C.A.B. number will be used on a future tariff.

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[ER-439, 30 FR 9439, July 29, 1965, as amended by ER-1271, 46 FR 63218, Dec. 31, 1981]

§ 221.167 Posting copies to be furnished participating carriers at time of filing.

At the same time that a tariff publication is transmitted to the Board for filing, the issuing carrier or agent shall send sufficient copies of the tariff publication for posting purposes to all participating carriers (see subpart N).

§ 221.168 Withdrawal or substitution of filed tariff publications prohibited.

A tariff publication filed with the Board will not be surrendered or returned and no substitution thereof will be permitted.

Subpart N—Posting Tariff Publications for Public Inspection

§ 221.170 Public notice of tariff information.

Carriers must make tariff information available to the general public, and in so doing must comply with either:

(a) Sections 221.171, 221.172, 221.173, 221.174, 221.175, and 221.176 or

(b) Sections 221.175, 221.176 and 221.177 of this subpart.

[53 FR 52677, Dec. 29, 1988]

§ 221.171 Posting at stations, offices, or locations other than principal or general office.

(a) Each carrier shall post and make available for public inspection at each of its stations, offices, or other locations which is in charge of a person employed exclusively by the carrier, or by it jointly with another person, currently effective tariffs and tariff publications which have been issued but are